



# HUMAN RIGHTS AND ENVIRONMENT

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## ABSTRACT

The main theme of this article is to interrogate a variety of arguments about the environment and human rights and its influences in order to assess their coherence and consistency, and to evaluate competing perspectives. This paper focuses at identifying the key links between globalization and environment; environment and human rights. An integrative section on the effects of globalization and environmental policy and performance leads to domestic and international priority policy issues and recommendations. Globalization is the process by which all peoples and communities come to experience an increasingly common economic, social and cultural environment. The processes of globalization have been increasing economic inequalities and new social problems in India. Public sector has had a decreasing trend due to the reducing government role in the economy. By definition, the process affects everybody throughout the world. In short, the more integrated environmental and trade policies are, the more sustainable economic growth will be and the more globalization can be harnessed for the benefit of the environment. The paper tries to analyze the effects of globalization and its impact on various sectors.

**KEY WORDS:** Human Rights, Environment, Principles, Globalization, Development, etc.

## Introduction

It is observed that, the globalization has serious implications both positive and negative in India as well as at global level. The people all over the world are experiencing the effects of ecosystem decline, from water shortages to fish kills to landslides on deforested slopes. The victims of environmental degradation tend to belong to more vulnerable sectors of society, i.e., racial and ethnic minorities and the poor, who regularly carry a disproportionate burden of such abuse. Increasingly, many basic human rights are being placed at risk, as the right to health affected by contamination of resources, or the right to property and culture compromised by commercial intrusion into indigenous lands.<sup>1</sup> It is very difficult to protect the rights of the poor and common man. While the causes of the environmental degradation are contested, the ramification on the human life and realization of basic human rights are indisputable. Hence it is an urgent need to strengthen the human face of globalization. But the international and national acknowledgement of relationship between environmental protection and human rights is relatively recent. The United Nations Conference on Environment in Stockholm in 1972 designated as the 'Magna Carta of Environment' laid down the foundation for the statutory base of the environmental law framework in India.<sup>2</sup>

## Development of Environmental protection as human rights

Environmental right means access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air. They also include more purely ecological rights, including the right for a certain extent to survive or the right for an individual to enjoy an unspoiled landscape.<sup>3</sup>

The first environmental movements were a direct consequence of the industrial revolution in the late eighteenth and early nineteenth centuries; the increased use of fossil fuels and chemicals, urban expansion and deforestation and increased human consumption led to drastic changes in the environment, drastically raised the level of pollution, damaging bio-diversity and depleting natural resources.<sup>4</sup> The first environmental movements were, however, primarily concerned with wild-life protection and nature conservation and paid little attention to the negative effects of human settlement and commerce.<sup>5</sup>

It is only after the Second World War that environmental movements have become extremely active. The rise in environmental movement is closely linked to the new phenomenon of globalization, which has transformed the structure of the international system. A globalised world is one, in which the boundaries between states are less and less visible and political, economic, cultural and social events are more and more interconnected with greater and far-reaching impact. The phenomenon of globalization has led governments and individuals to realize the international and trans-boundary dimensions of environmental issues. Finally, beginning with the UN Conference on the Human Environment held in Stockholm, Sweden in 1972 there has been an increasing movement towards the adoption of international instruments as tools for environmental protection. This conference considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. It stated the common conviction that: "Humans have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and a solemn responsibility to protect and improve the environment for present and future generations".<sup>6</sup>

The constitution of India did not include any specific provision relating to protection of environment or nature conservation. Presumably, the acute environmental problems being faced now in the country were not visualized by the framers of the constitution. With the 42<sup>nd</sup> Amendment 1976, in mid 1970's specific provisions relating to certain aspects of the environment was adopted, especially for the protection of the forest and wildlife in the country, the same were incorporated in Part-IV of the constitution and List-III (i.e., The Concurrent List of the Seventh schedule of the constitution). As a result, the constitution now has the following provisions specifically relating to environment protection and nature conservation:

- Part IV: Directive Principles of State Policy (Article 48A): Protection and improvement and safeguarding of forests and wildlife: The state shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.
- Part IV-A Fundamental Duties (Article 51-A): It shall be the duty of every citizen of India: (g) to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures and
- Seventh Schedule (Article 246):
  - List III – Concurrent List
  - Item No. 17 – Prevention of cruelty to animals;
  - Item No. 17A – Forests and
  - Item No. 17B – Protection of Wild Animals and Birds.

There have been several remarkable judicial pronouncements in the recent years, especially relating Article 21 of the constitution, dealing with 'the right to life'. The right to environment has been closely linked with the right to life. In *Francis Coralie Mullin v. Union Territory*,<sup>7</sup> the Supreme Court held that 'the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter...'

In *M C Mehta v. UOI*,<sup>8</sup> the Supreme Court held that life, public health and ecology have priority over unemployment and loss of revenue.

In *Shanti Star Builders v. Narayan Totame*,<sup>9</sup> the Supreme Court held that the right to life is guaranteed in a civilized society and would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.

In *Subhash Kumar v. the State of Bihar*,<sup>10</sup> the Supreme Court held that the right to life is a fundamental right under Article 21 of the constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has recourse to Article 32 of the Constitution for removing the pollution of water or air that may be detrimental to life.

Several new standards have also been developed over a period of time. Some of them are:

- The standard of absolute and non-delegable liability for disasters arising from the storage of or use of hazardous materials;
- The standards of sustainable development;
- The Precautionary Principle and
- The Polluter Pays Principle.

In *M C Mehta v. UOI & Ors.*<sup>13</sup> Also called as oleum gas leak case, the Supreme Court established a new concept of managerial liability – 'absolute and non-delegable' – for disasters arising from the storage of or use of hazardous materials in their factories. The enterprise must ensure that no harm results to anyone, irrespective of whether the disaster was caused by a negligent act or not;

In *Vellore Citizens Welfare Forum v. UOI*<sup>14</sup>, the Supreme Court held that industries are vital for the country's development, but with regard to the pollution caused by them, the principle of sustainable development has to be adopted as the balancing concept. The Precautionary principle and the Polluter pays principle have both been accepted as a part of the law of the country.

In *Indian Council of Environment – Legal Action v. UOI*<sup>15</sup>, known as the Bichhri Pollution case, it was held that, based on the decision in the oleum gas leak case and based on the Polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, especially to the soil and to the underground water.

Enunciating the doctrine of 'public trust' in *M C Mehta v. Kamal Nath*<sup>16</sup>, the Supreme Court held that the resources such as air, sea, water and the forests hold such a great importance for the people as a whole that by leasing ecologically fragile land to the motel management, the state govt. had committed a serious breach of public trust. Such wide interpretation of Article 21 by the Supreme Court have, over the years, become the bedrock of environmental jurisprudence and have served the cause of protecting India's environment and to a lesser extent, of livelihoods based on the natural environment.<sup>17</sup>

#### The Inter-Relationship between Environment and Human rights

As environmental issues have become more important in modern economic policy, at the same time, struggle for human rights has become more complex and challenging in an era of globalisation. While human rights have been increasingly protected by governments and international bodies like the United Nations, grave threats to and gross violations of human rights are also on the rise.

The right to development is an inalienable human right by virtue of which every human being and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.<sup>18</sup> Integrating the socio-cultural, economic and environmental components is not easy. Sustainability is really a simple concept, i.e., actions taken in the present to improve the human condition and the Earth system in which we live need to be lasting and benefit future generations.

Relationship between development and human rights has a long history, both in concept and in practice. At the end of the Second World War, the most atrocious and destructive conflict humanity had ever experienced. No wonder that the founding fathers of the United Nations had pledged a strong commitment to the promotion and protection of human rights. In fact, the architecture of the United Nations, by its very Charter, is built on three main pillars: peace and security, development, and human rights.

Conceptually, these three pillars were linked, interrelated and interdependent, so much so, that there could be no peace and security without development, no development without human rights and no human rights without peace and security. This trilogy was and remains the conceptual underpinning and basic mandate of the United Nations. In practice, the interrelationship between peace and security, development, and human rights has not always been evident over the years.

But now a day the legal protection of human rights has increasingly been invoked to achieve the ends of environment justice. Environmental justice deals with equitable utilization of resources, procedural fairness and a safe and healthy environment. In the era of globalization and a shift towards non-state actors international human rights has acquired crucial role. It can be arguably said human right deals with the conflict between trade and the environment and provide the means to reconcile it.<sup>19</sup>

The relationship between a safe and healthy environment and human rights has been on the global agenda since the preparations for the 1972 Stockholm Conference on the Human Environment. This idea was reflected in principle 1 of the 1972 Stockholm Declaration, which stated that man's natural and self-made environment is 'essential to his well-being and to the enjoyment of basic human rights and the right to life itself'. Despite this strong statement, such a human rights based argument has not been followed in subsequent environmental declarations, such as the 1992 Rio Declaration. Instead, these declarations have linked

human wellbeing to the state of the environment without any explicit reference to human rights.<sup>20</sup>

In general, there are three broad approaches to link human rights and the environment.

1. To view a quality environment as an underlying precondition for the enjoyment of existing human rights, rather than a specific right in itself.
2. Focusing on the procedural rights of people in relation to control over their environment, such as rights to participation in environmental decision-making and access to justice.
3. A substantive justifiable right to a certain quality of environment. Provisions to this effect are found in some national constitutions, such as those of South Africa, the Russian Federation and Spain, and in the African Charter on Human and Peoples' Rights.

The link between human rights and the environment has developed in a fragmented manner across national, regional and international levels in case law, regulations and international agreements. As a result, much of the linkage between human rights and environmental law has been highlighted through decisions of national courts and regional human rights bodies. This has resulted in rapid development of jurisprudence, but the piecemeal development has lacked a comprehensive framework linking human rights and the environment.

Several efforts have sought to clarify the linkage between these important concepts at the international level. Like, a draft declaration on Principles on Human Rights and the Environment was prepared in 1994 by a group of experts, and it was presented before the UN Commission on Human Rights in 1995. This declaration proposed a substantive right to 'a secure, healthy, and ecologically sound environment' and included the concept of intergenerational equity.

There are three main dimensions<sup>21</sup> of the interrelationship between human rights and environmental protection:

The environment as a pre-requisite for the enjoyment of human rights (implying that human rights obligations of States should include the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights);

- Certain human rights, especially access to information, participation in decision-making, and access to justice in environmental matters, as essential to good environmental decision-making (implying that human rights must be implemented in order to ensure environmental protection); and
- The right to a safe, healthy and ecologically-balanced environment as a human right in itself (this is a debated approach).

Recent developments which have served to underline the close linkages between human rights and environment include:

- The findings of the Millennium Ecosystem Assessment (2005) that have made explicit the contribution of ecosystem services to human well-being, which is broken down into a series of "constituents" of well being, which can be related to human rights; and
- The new attention given to human rights in the context of climate change discussions notably the recent resolutions of the Human Rights Council on human rights and climate change.<sup>22</sup>
- In 2010 the United Nations General Assembly endorsed the human right to safe and clean drinking water and sanitation.<sup>23</sup> The resolution 64/292 speaks to the importance of equitable, safe and clean drinking water and sanitation as an integral component of the realization of all human rights and links the right to water to achievement of the Millennium Development Goals and the Plan of Implementation of the World Summit on Sustainable Development. The important first operative paragraph of the resolution "declares the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."
- In September 2010, the Human Rights Council adopted a similar resolution<sup>24</sup> in which it affirmed that the human right to safe drinking water and sanitation is "derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity." The Council called upon States to take specific measures to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in un-served and underserved areas. In this respect, States were asked to pay particular attention to persons belonging to vulnerable and marginalized groups. It also urged development partners to adopt a human rights-based approach when designing and implementing development programmes.
- Commonly linked with the right to water is the right to food, which is also

closely associated with the environmental quality. The Human Rights Commission recognized that the links between the issue of right to food with sound environmental policies have already been recognized by Committee on Economic, Social and Cultural Rights and noted that problems related to food shortages can generate additional pressures upon the environment in ecologically fragile areas.<sup>25</sup> Moreover, the impact of climate change on food supply is widely recognize and was in 2010 brought to the attention of Committee on Economic, Social and Cultural Rights by the Special Rapporteur on the Right of Food in 2010.<sup>26</sup>

- The enjoyment of other human rights, such as the right to health, is also inextricably linked to environmental conditions, as recognized in the reports submitted by the relevant UN special rapporteurs. The enjoyment of internationally-guaranteed rights thus depends upon a sound environment.
- In March 2011, the Human Rights Council adopted resolution 16/11 on “human rights and the environment” and requested OHCHR to conduct a detailed analytical study on the relationship between human rights and the environment.<sup>27</sup> This study found that, while much progress has been made in understanding the relationship between human rights and the environment, several important questions remained. These unsettled issues include the need for and potential content of a right to a healthy environment, the role and duties of private actors with respect to human rights and the environment, the extraterritorial reach of human rights and environment, and how to operationalize and monitor the implementation of international human rights obligations relating to the environment. To address these questions, the report suggested that the Human Rights Council consider paying special attention to the relationship between human rights and the environment through its appropriate mechanisms, including through the possibility of establishing a special procedure on human rights and the environment.
- On 22 March 2012, the Human Rights Council adopted by consensus a resolution (19/L.8 Rev.1) on “human rights and the environment,” with at least 72 cosponsors. The resolution welcomed OHCHR's report and decided to appoint for a period of three years, an independent expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment and encourages the OHCHR to participate at Rio+20 in June 2012 in order to promote a human rights perspective<sup>28</sup>.

In examining the relationship between environmental protection and human rights, the controversial question is whether environmental protection aims at enhancing the quality of human life and is thus a subset of human rights or whether environmental protection and human rights are based on different social values. Another, third approach sees human rights and environmental protection as representing two different strands with different but overlapping social values. The two strands overlap and can be mutually supportive where environmental values seek to protect human needs or well-being. However, this approach differentiates between environmental protection and human rights when the conceptual underpinnings of human rights are not suitable to address environmental issues. Further, these issues gained importance after adopting globalisation as a basic mantra of the economic policies.

### Effect of Globalization

Since from the beginning the most talked-about issues of the late twentieth century and the new millennium, the phenomenon of globalization has captured world attention in various ways. Now, because of globalization's multifaceted nature, it is essential to grasp the different motivating forces that are impelling these developments aside from the purely economic, and also to recognize the different directions from which they are coming. Intrinsic to this form of globalization is a growing legal and institutional framework within which the regimes of contemporary international trade, finance and investment are being conducted.

Globalization brings about structural changes within an economy. It opens up new opportunities for enhancing employment and income. However, it also closes down, or at least diminishes, many existing means of livelihood: opportunities open up in activities in which a country has comparative advantage, and diminish in those in which it has comparative disadvantage. This may have profound implications for the achievement of the right to development.

Another form of globalization has its effects on environmental and human rights struggles. Human rights movement has long laid claim to a universalizing mission. This is evident in the assertion that the regime of rights and freedoms established through the Universal Declaration of Human Rights and the numerous other instruments that have since been promulgated in the same spirit extend beyond the arena of purely national concern.<sup>29</sup> The concept of sustainable development becomes a buzz word and to implement the concept, some of the important international Conventions were entered into.

The term sustainable human development may be defined as the capacity of all human communities, including the most deprived, to meet their fundamental needs for accommodation, drinking water, food, satisfactory conditions of health and hygiene, participation in decision-making, social cohesion, a social fabric, cultural and spiritual expression, etc. This entails the adaptation of technologies and lifestyles to the social, economic and environmental potential of

each region, internalising costs and establishing systems that are compatible with the biosphere.

Such an approach makes sustainable human development a multifaceted process. It seeks a balance between the ecological, economic and social spheres, while also taking account of political (participation and democratisation), ethical (responsibility, solidarity, social justice and sufficiency) and cultural (local diversity and artistic expression) considerations.

Sustainable human development also calls for a fundamental re-evaluation of our basic principles and lifestyles, and of the way our societies function, particularly regarding production and consumption. This implies significant changes in attitudes and behaviour, in which an awareness of living in a common space, individual responsibility for actions, and learning to identify long-term perspectives and partnership between players in different regions of the world, including governments, international institutions, business and civil society, take precedence over material factors.

### Conclusion

With the above discussions, it can be concluded that an important issue confronting policy makers today is the complex challenge of preserving the natural environment while simultaneously promoting development to meet the basic needs of humanity. With the adoption of globalisation trade policies were liberalized, which caused further environmental destruction. Many problems resulted in this area of discussion, with regard to the intricate linkages between human rights and environmental decay.

In spite of the tussle between human rights and environment protection one thing is ample clear that mankind is part of nature and separation of interests of human beings and the environment is quite difficult because human requires air, water and food in order to survive but on the hand contamination, pollution or destruction of these elements poses a direct threat to health, shelter, food and well being of human life.

In fact human right and environment go hand by hand because the degradation of the environment violates numerous well-recognized human rights. This is the fundamental principle that no life is possible without some level of healthful environment. Just because of this it can be averred that the right to environment is a condition precedent to all other human rights but at the same time the basis for a right to a healthful environment.

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